

1 **SANI LAW, APC**
2 Sam Sani (SBN 273993)
3 136 Main Street, Suite A
4 El Segundo, CA 90245
5 Tel: (310) 935-0405
6 Fax: (310) 935-0409
7 ssani@sanilawfirm.com

8 Attorney for Plaintiff, the Classes
9 **EVELIA MONTANO**

10 **UNITED STATES DISTRICT COURT**

11 **CENTRAL DISTRICT OF CALIFORNIA**

12 EVELIA MONTANO, as an individual
13 and on behalf of all others similarly
14 situated,

15 CASE NO.: 2:19-cv-382

16 **Class and Collective Action
17 Complaint:**

18 (1) **Meal Break Violations;**
19 (2) **Rest Break Violations;**
20 (3) **Minimum Wage Violations;**
21 (4) **Overtime Wage Violations;**
22 (5) **Fair Labor Standards Act (29
23 U.S.C. § 201 *et seq.*);**
24 (6) **Wage Statement Violations;**
25 (7) **Waiting Time Penalties;**
26 (8) **Unfair Competition**

27 **Demand For Jury Trial
28 Unlimited Civil Case**

10 Plaintiff,

11 vs.

12 BYD COACH AND BUS LLC, a
13 California corporation; and DOES 1
14 through 10,

15 Defendants.

1 Plaintiff Evelia Montano (“Plaintiff”) brings this Class and Collective Action
 2 Complaint (“Complaint”) individually and on behalf of all others similarly situated
 3 against BYD Coach and Bus LLC, a California corporation, and DOES 1 to 10,
 4 inclusive (collectively “Defendants”), and on information and belief alleges as
 5 follows:

6 **Jurisdiction & Venue**

7 1. This Complaint seeks recovery of unpaid wages and penalties under
 8 the Fair Labor Standards Act (“FLSA”), California Business and Professions Code
 9 § 17200 *et. seq.*, Labor Code §§ 201-204, 218.5, 218.6, 226 *et seq.*, 226.7, 510, 512,
 10 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, and Industrial Welfare Commission
 11 Wage Order 9 (“Wage Order 9”), declaratory relief, and restitution.

12 2. This Court has jurisdiction over (1) Defendants’ violations of the
 13 FLSA pursuant to 29 U.S.C. § 216 and 28 U.S.C. § 1331 because the action asserts
 14 rights arising under federal law, and (2) Defendants’ violation of the California
 15 Labor Code sections set forth in the immediately preceding paragraph, California
 16 Business and Professions Code and Wage Order 9, because these claims derive from
 17 the same common nucleus of operative facts.

18 3. Venue is proper under 28 U.S.C. 1391 because Defendants do business
 19 in Los Angeles County and the acts alleged herein took place in Los Angeles
 20 County. Plaintiff does now, and at all times relevant herein did, reside in Los
 21 Angeles County and was employed by Defendants within Los Angeles County.
 22 Defendants are also subject to the personal jurisdiction of this Court pursuant to 28
 23 U.S.C. 1391(c), because at least some of them operate businesses where they
 24 employed Plaintiff within the Central District of California.

25 **Parties**

26 **Plaintiff Evelia Montano**

27 4. Plaintiff is an individual over the age of eighteen (18) who, at all time
 28 relevant, was and currently is a California resident, and who was employed by

1 Defendants as a non-exempt employee during the statute of limitations period
2 applicable to each claim pled herein. Defendants' unlawful wage and hour policies
3 and practices caused Plaintiff injury and violated her rights pursuant to the FLSA,
4 California Labor Code §§ 201-204, 218.5, 218.6, 226 *et seq.*, 226.7, 510, 512, 516,
5 558, 1182.12, 1194, 1194.2, 1197, 1198, and California Business and Professions
6 Code § 17200 *et seq.*; and Wage Order 9 which sets employment standards for the
7 transportation industry.

8 **Defendants BYD Coach and Bus LLC & DOES 1-10**

9 5. During the statute of limitations period applicable to each claim pled
10 herein, Defendants did, and do business by manufacturing electric vehicles,
11 including automobiles, buses, and trucks. Defendants employed Plaintiff and other,
12 similarly-situated non-exempt employees within the State of California, including
13 Los Angeles County. Thus, Defendants were and continue to operate a business in
14 Los Angeles County and the State of California.

15 6. Plaintiff does not know the true names or capacities, whether
16 individual, partner, or corporate, of the defendants sued herein as DOES 1 to 10,
17 inclusive, and for that reason, said defendants are sued under such fictitious names,
18 and Plaintiff will seek leave from this Court to amend this Complaint when such
19 true names and capacities are discovered. Plaintiff is informed and believes, and
20 based thereon alleges, that each of said fictitious defendants, whether individual,
21 partners, or corporate, were responsible in some manner for the acts and omissions
22 alleged herein, and proximately caused Plaintiff and the Classes (as defined in
23 Paragraphs 19-27) to be subject to the unlawful employment practices, wrongs,
24 injuries and damages complained of herein.

25 7. Plaintiff is informed, and believes, and thereon alleges, that at all times
26 relevant, Defendants were and are the employers of Plaintiff and all members of the
27 Classes.

28 8. At all times relevant, each Defendant participated in the acts alleged to

1 have been done by the named Defendants; and each of them were the agents,
2 servants, and employees of each and every one of the other Defendants, as well as
3 the agents of all Defendants, and at all times herein mentioned were acting within
4 the course and scope of said agency and employment. Defendants, and each of
5 them, approved of, condoned, and/or otherwise ratified each and every one of the
6 acts or omissions complained of herein.

7 9. At all times relevant, Defendants, and each of them, were members of
8 and engaged in a joint venture, partnership, and common enterprise, and acting
9 within the course and scope of and in pursuance of said joint venture, partnership,
10 and common enterprise.

11 10. At all times relevant, Defendants were joint employers for all purposes
12 of Plaintiff and all Class Members.

13 **Factual Allegations**

14 11. Defendants employed Plaintiff Evelia Montano (“Plaintiff”) from
15 approximately June 2017 through her termination in November 2018. Plaintiff
16 worked as a non-exempt employee for Defendants from June 2017 through
17 approximately August 2018 (“non-exempt period”), during which time Plaintiff
18 work in the Data Entry position in Defendants’ sales department.

19 12. Defendants have had a consistent policy of failing to provide Plaintiff
20 and other similarly situated non-exempt employees within the State of California a
21 thirty (30) minute uninterrupted meal period for days on which the employees
22 worked more than five (5) hours in a work day, and a second thirty (30) minute
23 uninterrupted meal period for days on which the employees worked in excess of ten
24 (10) hours in a work day. Plaintiff’s volume of work and deadlines imposed by
25 Defendants prevented her from taking meal periods that started before the fifth hour
26 of work and that were at least 30 minutes in length. Even when Plaintiff and other
27 non-exempt employees clocked-out for a purported meal period, Defendants
28 imposed such a high volume of work and deadlines that Plaintiff and other non-

1 exempt employees were forced to work off-the-clock work during such purported
2 meal periods. Defendants' policy and/or practice of forcing non-exempt employees
3 to perform unpaid off-the-clock work during their purported meal periods caused
4 Plaintiff and other non-exempt employees to not be paid minimum wages for the
5 time they worked during purported meal periods, and to work in excess of 8 hours
6 per work day and/or in excess of 40 hours per workweek without receiving overtime
7 wages for such overtime work. On occasions when Plaintiff started a first meal
8 period after the fifth hour of a shift, Defendants manually modified Plaintiff's time
9 records to reflect that she had started her first meal period before the fifth hour of
10 the shift.

11 13. Defendants also failed to pay Plaintiff and other non-exempt
12 employees a meal period premium for each work-shift in which they were not
13 provided a legally compliant meal period, as required under Labor Code § 226.7.

14 14. Defendants had a consistent policy of failing to provide Plaintiff and
15 similarly situated employees or former employees within the State of California rest
16 periods of at least ten (10) minutes per four (4) hours worked or major fraction
17 thereof. Defendants, as a matter of policy and practice, imposed work volumes and
18 deadlines on Plaintiff and other non-exempt employees such that they were not
19 authorized and/or permitted to take ten-minute rest periods per four hours of work,
20 or major fraction thereof.

21 15. Defendants also failed to pay Plaintiff and other non-exempt
22 employees a rest period premium for each work-shift in which they were not
23 authorized and permitted to take a legally compliant rest period, as required under
24 Labor Code § 226.7.

25 16. Defendants have failed to comply with Labor Code section 226(a) by
26 not providing itemized wage statements accurately reporting, including but not
27 limited to, non-exempt employees' total regular and overtime hours worked, and
28 gross and net wages earned.

17. At the time when Plaintiff's employment and the employment of other non-exempt former employees of Defendants ended, Defendants willfully failed to pay all final wages owed to Plaintiff and other non-exempt employees, including all meal and rest period premium wages and all minimum wages and overtime wages.

Class & Collective Action Allegations

18. Plaintiff brings this action on behalf of herself and all other similarly situated non-exempt employees pursuant to Rule 23 of the Rules of Federal Procedure and the FLSA. Plaintiff seeks to represent nine (9) Classes composed of and defined as follows:

19. The **Meal Break Class** is composed of all current and former non-exempt employees of Defendants within the State of California at any time starting from four years before the filing of this Complaint until the time that notice of this class action is provided to the class who worked shifts five (5) hours or more without receiving a thirty (30) minute meal period before the start of the fifth hour of work, or who worked shifts ten (10) hours or more without receiving a second thirty (30) minute meal break;

20. The **Rest Break Class** is composed of all current and former non-exempt employees of Defendants within the State of California at any time starting from four years before the filing of this Complaint until the time that notice of this class action is provided to the class who worked shifts of four (4) hours or more;

21. The **California Minimum Wage Class** is composed of all current and former non-exempt employees of Defendants within the State of California at any time starting from four years before the filing of this Complaint until the time that notice of this class action is provided to the class who were subjected to Defendants' meal break policies/practices;

22. The **FLSA Minimum Wage Class** is composed of all current and former non-exempt employees of Defendants throughout the United States at any

1 time starting from three years before the filing of this Complaint until the time that
2 notice of this class action is provided to the class who were subjected to Defendants'
3 meal break policies/practices;

4 23. The **California Overtime Class** is composed of all current and former
5 non-exempt employees of Defendants within the State of California at any time
6 starting from four years before the filing of this Complaint until the time that notice
7 of this class action is provided to the class who worked more than eight hours in a
8 workday and/or forty hours in a workweek and were subjected to Defendants' meal
9 break policies/practices;

10 24. The **FLSA Overtime Class** is composed of all current and former non-
11 exempt employees of Defendants throughout the United States at any time starting
12 from three years before the filing of this Complaint until the time that notice of this
13 class action is provided to the class who worked more than forty hours in a
14 workweek and were subjected to Defendants' meal break policies/practices;

15 25. The **Itemized Statement Class** is composed of all members of the
16 Meal Break Class, Rest Break Class, California Minimum Wage Class, and
17 California Overtime Class, who received a wage statement from Defendants at any
18 time starting from one year before the filing of this Complaint until the time that
19 notice of the class action is provided to the class;

20 26. The **Late Pay Class** is composed of consists of all members of the
21 Meal Break Class, Rest Break Class, California Minimum Wage Class, and
22 California Overtime Class who did not receive all their wages upon the end of their
23 employment at any time starting from three years before the filing of this Complaint
24 until the time that notice of this class action is provided to the class;

25 27. The **Unfair Competition Class** is composed of all members of the
26 Meal Break Class, the Rest Break Class, the California Minimum Wage Class, the
27 California Overtime Class, the Itemized Statement Class, and the Late Pay Class.

28 **A. Numerosity**

1 28. The potential members of the Classes as defined are so numerous that
2 joinder of all members of the Classes is impracticable. While the precise number
3 of Class Members has not been determined at this time, Plaintiff estimates that there
4 are over fifty (50) Class Members employed by Defendants.

5 29. Accounting for employee turnover during the statutory periods
6 necessarily increases this number substantially. Plaintiff alleges that Defendants'
7 employment records would provide information as to the number and location of
8 all Class Members.

9 **B. Commonality**

10 30. There are questions of law and fact common to Class Members. These
11 common questions include, without limitation:

- 12 (1) Did Defendants violate Labor Code section 512 by not
13 providing meal breaks to Class Members?
- 14 (2) Did Defendants violate Labor Code section 226.7 by not paying
15 meal break premium wages to Class Members for late, missed,
16 or interrupted meal breaks?
- 17 (3) Did Defendants violate Labor Code section 226.7 by not paying
18 rest break premium wages to Class Members for missed rest
19 breaks?
- 20 (4) Did Defendants violate Labor Code section 1194 by not paying
21 all minimum wages to Class Members for off-the-clock work
22 they performed during purported meal breaks?
- 23 (5) Did Defendants violate Labor Code sections 510 and 1194 by
24 not paying all overtime wages to Class Members for overtime
25 work they performed during work shifts in which they
26 performed off-the-clock work during purported meal breaks?
- 27 (6) Did Defendants violate Labor Code sections 201 and 202 by
28 failing to pay Class Members all wages earned upon termination
or resignation?

- 1 (7) Did Defendants violate Labor Code section 226 by not
- 2 furnishing Class Members with accurate wage statements?
- 3 (8) Did Defendants violate the Unfair Competition Law, Business
- 4 and Professions Code section 017200, *et seq.*, by their unlawful
- 5 practices alleged herein?
- 6 (9) Are Class Members entitled to attorneys' fees and costs?

7 31. The common questions alleged herein are numerous and substantial as
8 they arise from Defendants' consistent meal and rest break policies/practices, and
9 minimum wage and overtime wage policies/practices applicable to Class Members.
10 The common questions alleged herein predominate over individualized questions
11 about each class member's right to recover and amount of damages.

12 **C. Typicality**

13 32. Plaintiff's claims alleged herein are typical of those claims which
14 could be alleged by any member of the Classes, and the relief sought is typical of
15 the relief which would be sought by each of the members of the Classes in separate
16 actions. Plaintiff and members of the Classes sustained injuries and damages
17 arising out of and caused by Defendants' common course of conduct in violation of
18 laws and regulation that have the force and effect of law and statutes as alleged
19 herein.

20 **D. Adequate Representative**

21 33. Plaintiff will fairly and adequately represent and protect the interests
22 of the members of the Classes. Counsel who represents Plaintiff is competent and
23 experienced in litigating wage and hour class actions.

24 **E. Superiority of Class Action**

25 34. A class action is superior to other available means for the fair and
26 efficient adjudication of this controversy. Individual joinder of all Class Members
27 is not practicable, and questions of law and fact common to the Classes predominate
28 over any questions affecting only individual members of the Classes. If each

1 individual member of the Classes was required to file an individual claim against
2 Defendants, Defendants would have the advantage of being able to overwhelm each
3 individual Class Member's limited resources with Defendants' more robust
4 resources. Requiring Class Members to file individual claims may dissuade Class
5 Members, who would otherwise join the Classes, from pursuing their individual
6 claims due to fear of retaliation from their employment and/or harm to their career.
7 Requiring Class Members to file individual claims would also increase the risk of
8 inconsistent adjudications/verdicts with respect to the claims alleged herein. This
9 could in turn create varying standards of conduct for Defendants to follow with
10 respect to the claims alleged herein. Class action treatment will allow those
11 similarly situated to litigate their claims in a manner that is most efficient and
12 economical for the parties and the judicial system. Plaintiff is unaware of any
13 difficulties that are likely to be encountered in the management of this action that
14 would preclude its maintenance as a class action.

15 35. As such, the Rule 23 Classes identified in Paragraph 16 are
16 maintainable as a Class under Rule 23(b)(1) and/or Rule 23(b)(3).

17 **FIRST CLAIM**

18 **MEAL BREAK VIOLATIONS**
19 **(AGAINST ALL DEFENDANTS)**

20 36. Plaintiff re-alleges and incorporates by reference all previous
21 paragraphs.

22 37. Plaintiff is informed and believes, and based thereon alleges, that
23 Defendants failed to provide Plaintiff and members of the Meal Period Class, with
24 all legally compliant meal periods in accordance with the California Labor Code
25 and Wage Order 9, § 11. Despite Defendants' violations, Defendants did not pay an
26 additional hour of pay to Plaintiff and members of the Meal Period Class in
27 accordance with California Labor Code §§ 204, 210, 226.7, and 512.

28 38. Defendants are responsible for paying premium compensation for

1 meal period violations to Plaintiff and members of the Meal Period Class pursuant
2 to Labor Code §§ 226.7, 512, and 558, and Wage Order 9, including interest
3 thereon, statutory penalties, and costs of suit.

4 **SECOND CLAIM**
5 **REST BREAK VIOLATIONS**
6 **(AGAINST ALL DEFENDANTS)**

7 39. Plaintiff re-alleges and incorporates by reference all previous
8 paragraphs.

9 40. Plaintiff is informed and believes, and based thereon alleges, that
10 Defendants failed to authorize and permit Plaintiff and members of the Rest Period
11 Class to take all required rest periods in accordance with Wage Order 9, § 12 and
12 California Labor Code §§ 226.7, 516 and 558.

13 41. Defendants are responsible for paying premium compensation for rest
14 period violations to Plaintiff and members of the Rest Period Class, including
15 interest thereon, statutory penalties, and costs of suit, pursuant to California Labor
16 Code §§ 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289.

17 **THIRD CLAIM**
18 **MINIMUM WAGE VIOLATIONS**
19 **(AGAINST ALL DEFENDANTS)**

20 42. Plaintiff re-alleges and incorporates by reference all previous
21 paragraphs.

22 43. This claim is brought on behalf of the California Minimum Wage Class
23 pursuant to Wage Order 9, § 4 and California Labor Code §§ 1197 and 1182.12,
24 which establish employees' right to be paid the state-mandated minimum wage for
25 all hours worked. An employee who does not receive the state-mandated minimum
26 wage for all hours worked may recover the unpaid balance, attorneys' fees and
27 costs, and liquidated damages in an amount equal to the unpaid wages and interest
28 accrued thereon. California Labor Code §§ 1194(a), 1194.2(a).

44. At all times relevant to this action, Defendants failed to conform its minimum wage policies and practice to the law by failing to pay Plaintiff and members of the California Minimum Wage Class for all hours worked, including all hours they were performed work off-the-clock during purported first meal periods.

45. As a consequence of Defendants' non-payment of minimum wages, Plaintiff and members of the Minimum Wage Class seek the unpaid balance of the unpaid minimum wages owed pursuant to California Labor Code § 1194; penalties pursuant to Wage Order 9 § 20(A) and California Labor Code § 1197.1; interest pursuant to California Labor Code §§ 218.6 and 1194 and Civil Code §§ 3287 and 3289; liquidated damages pursuant to California Labor Code § 1194.2; attorneys' fees and costs of suit pursuant to California Labor Code § 1194 et seq.; and damages and/or penalties pursuant to California Labor Code § 558(a).

FOURTH CLAIM
OVERTIME WAGE VIOLATIONS
(AGAINST ALL DEFENDANTS)

46. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

47. This claim is brought on behalf of the California Overtime Class pursuant to California Labor Code §§ 204, 510, 558, 1194, and 1198, which provide that hourly non-exempt employees are entitled to all overtime wages and compensation for hours worked, and provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

48. Plaintiff and members of the California Overtime Class worked overtime hours as a result of performing unpaid off-the-clock work during their purported first meal periods. At all times relevant herein, Defendants were required to properly compensate hourly non-exempt employees, including Plaintiff and members of the California Overtime Class, for all overtime hours worked pursuant

1 to California Labor Code § 1194 and Wage Order 9. Wage Order 9, § 3 requires an
2 employer to pay an employee “one and one-half (1½) times the employee’s regular
3 rate of pay” for work in excess of 8 hours per work day and/or in excess of 40 hours
4 of work in the workweek. Wage Order 9, § 3 also requires an employer to pay an
5 employee double the employee’s regular rate of pay for work in excess of 12 hours
6 each work day and/or for work in excess of 8 hours on the seventh consecutive day
7 of work in the workweek.

8 49. Plaintiff is informed and believes, and based thereon alleges that
9 Defendants regularly and systematically, as a policy and practice, failed to pay
10 Plaintiff and members of the California Overtime Class all overtime wages for work
11 they performed in excess of eight hours per work day and/or in excess of forty hours
12 per workweek as a result of their working off-the-clock during their purported first
13 meal periods.

14 50. Defendants’ policy and practice of requiring overtime work and not
15 paying overtime wages for all overtime hours worked violates California Labor
16 Code §§ 204, 210, 510, 558, 1194, and 1198, and Wage Order 9.

17 51. The foregoing policies and practices are unlawful and create an
18 entitlement to recovery by Plaintiff and members of the California Overtime Class
19 in a civil action for the unpaid amount of overtime premiums owing, including
20 interest thereon, statutory penalties, civil penalties, attorney’s fees, and costs of suit
21 according to California Labor Code §§ 204, 210, 510, 558, 1194, 1198, and Code
22 of Civil Procedure § 1021.5.

23 **FIFTH CLAIM**

24 **FAIR LABOR STANDARDS ACT VIOLATIONS**
25 **(AGAINST ALL DEFENDANTS)**

26 52. Plaintiff re-alleges and incorporates by reference all previous
27 paragraphs

28 53. This claim is brought pursuant to 29 U.S.C. § 206, which requires

1 employers to pay all non-exempt employees the federal-mandated minimum wage
2 for all hours worked, and 29 U.S.C. § 207, which requires employers to pay all non-
3 exempt employees one and one-half times the regular rate of pay for all hours
4 worked in excess of 40 per workweek.

5 54. At all times relevant to this action, Defendants failed to conform their
6 minimum wage policies and practice to the law by failing to pay Plaintiff and
7 members of the FLSA Minimum Wage Class at least the federal-mandated
8 minimum wage for all hours worked, including all hours they were performed work
9 off-the-clock during purported first meal periods. Defendants' policy and practice
10 of requiring Plaintiff and members of the FLSA Minimum Wage Class to perform
11 unpaid off-the-clock work, as alleged, violates the FLSA's minimum wage
12 requirements, including 29 U.S.C. § 206.

13 55. At all times relevant to this action, Defendants failed to conform their
14 overtime wage policies and practice to the law by failing to pay Plaintiff and
15 members of the FLSA Overtime Class all overtime wages for work they performed
16 in excess of forty hours per workweek as a result of their working off-the-clock
17 during their purported first meal periods. Defendants' policy and practice of
18 requiring Plaintiff and members of the FLSA Overtime Wage Class to perform
19 overtime work and not paying them all overtime wages owed for such work, as
20 alleged, violates the FLSA's overtime requirements, including 29 U.S.C. § 207.

21 56. Defendants' policies and practices, as alleged, constitute a wilful
22 violation of the FLSA, within the meaning of 29 U.S.C. § 255.

23 57. Defendants' policy and practice of failing to pay all minimum wages
24 and overtime wages, as alleged, creates an entitlement for Plaintiff and members of
25 the FLSA Minimum Wage Class and FLSA Overtime Wage Class to recover in a
26 civil action the unpaid amount of minimum wages and overtime wages, liquidated
27 damages, attorneys' fees and costs, and interest thereon. 29 U.S.C. § 216.

28

1 **SIXTH CLAIM**

2 **WAGE STATEMENT VIOLATIONS**

3 **(AGAINST ALL DEFENDANTS)**

4 58. Plaintiff re-alleges and incorporates by reference all previous
5 paragraphs.

6 59. Plaintiff is informed and believes, and based thereon alleges, that
7 Defendants knowingly and intentionally, as a matter of uniform policy and practice,
8 failed to furnish Plaintiff and members of the Wage Statement Class with complete
9 and accurate wage statements that correctly list the total regular and overtime hours
10 worked and total gross and net wages earned with respect to their actual regular and
11 overtime hours worked, total gross wages earned, in violation of Labor Code § 226
12 et seq.

13 60. Defendants' failure to furnish complete and accurate wage statements,
14 as alleged, caused actual injury to Plaintiff and members of the Wage Statement
15 Class including because Defendants' failures led to non-payment of all earned
16 minimum wages and overtime wages, and meal and rest period premium wages,
17 and deprived non-exempt employees of the information necessary to identify the
18 discrepancies in Defendants' reported data.

19 61. Defendants' policy and practice of failing to furnish complete and
20 accurate wage statements, as alleged, creates an entitlement for Plaintiff and members
21 of the Wage Statement Class to recover, in a civil action, damages and/or penalties
22 pursuant to Labor Code § 226 et seq., including statutory penalties, reasonable
23 attorneys' fees, and costs of suit according to California Labor Code § 226 *et seq.*

24 **SEVENTH CLAIM**

25 **WAITING TIME PENALTIES**

26 **(AGAINST ALL DEFENDANTS)**

27 62. Plaintiff re-alleges and incorporates by reference all previous
28 paragraphs.

63. California Labor Code §§ 201-203 require an employer to pay all final wages immediately upon termination of an employee's employment or if the employee provides at least 72 hours of notice of their intent to quit, or within 72 hours of an employee's last date of employment if the employee provides less than 72 hours of notice of their intent to quit.

64. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to timely pay Plaintiff and members of the Waiting Time Penalty Class all final wages due at their separation from employment, including, unpaid minimum wages, overtime wages, and meal and rest period premium wages.

65. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203, and results in a continued payment of wages up to thirty days from the time the wages were due.

66. Plaintiff and members of the Waiting Time Penalty Class are entitled to recover statutory penalties pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

EIGHTH CLAIM
UNFAIR COMPETITION
(AGAINST ALL DEFENDANTS)

67. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

68. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code § 17200 et seq., by failing to properly pay all minimum and overtime wages, provide all required meal periods and authorize and permit all required rest periods, or pay premium payments in lieu thereof, and failing to pay all final wages owed to employees upon their separation from employment with Defendants.

69. Defendants' unfair and/or unlawful business practices deprived

1 Plaintiff and continues to deprive members of the Classes of compensation to which
2 they are legally entitled, constitutes unfair and/or unlawful competition, and
3 provides an unfair advantage over Defendants' competitors who have been and/or
4 are currently employing workers and attempting to do so in honest compliance with
5 applicable wage and hour laws.

6 70. Because Plaintiff is a victim of Defendants' unfair and/or unlawful
7 conduct alleged herein, Plaintiff for herself and on behalf of the members of the
8 Classes, seeks full restitution of monies, as necessary and according to proof, to
9 restore any and all monies withheld, acquired and/or converted by Defendants
10 pursuant to Business and Professions Code §§ 17203 and 17208.

11 71. The acts complained of herein occurred within the last four years
12 immediately preceding the filing of the Complaint in this action.

13 72. Plaintiff was compelled to retain the services of counsel to file this
14 court action to protect his interests and those of the Classes, to obtain restitution and
15 injunctive relief on behalf of Defendants' current non-exempt employees, and to
16 enforce important rights affecting the public interest. Plaintiff has thereby incurred
17 the financial burden of attorneys' fees and costs, which he is entitled to recover
18 under Code of Civil Procedure § 1021.5.

19 **PRAAYER**

20 WHEREFORE, Plaintiff prays for judgment for herself and for all others on
21 whose behalf this suit is brought against Defendants, as follows:

22 1. For an order certifying the proposed Classes;
23 2. For an order appointing Plaintiff as representative of the Classes;
24 3. For an order appointing Counsel for Plaintiff as Counsel for the
25 Classes;
26 4. Upon the First Claim, for compensatory, consequential, general and
27 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
28 5. Upon the Second Claim, for compensatory, consequential, general and

1 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;

2 6. Upon the Third Claim, for payment of minimum wages, liquidated
3 damages, and penalties according to proof pursuant to Labor Code §§ 1182.12,
4 1194, 1194.2 and 1197;

5 7. Upon the Fourth Claim, for compensatory, consequential, general and
6 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194,
7 and 1198;

8 8. Upon the Fifth Claim, for compensatory, consequential, liquidated,
9 general and special damages pursuant to 29 U.S.C. §§ 206, 207, and 216;

10 9. Upon the Sixth Claim, for statutory wage statement penalties pursuant
11 to Labor Code § 226 *et seq.*;

12 10. Upon the Seventh Claim, for statutory waiting time penalties pursuant
13 to Labor Code § 203;

14 11. Upon the Eighth Claim, for restitution to Plaintiff and members of the
15 Classes of all money and/or property unlawfully acquired by Defendants by means
16 of any acts or practices declared by this Court to be in violation of Business and
17 Professions Code § 17200 *et seq.*;

18 12. Prejudgment interest on all due and unpaid wages pursuant to
19 California Labor Code § 218.6 and Civil Code §§ 3287 and 3289;

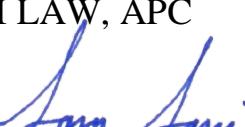
20 13. On all causes of action, for attorneys' fees and costs as provided by
21 Labor Code § 218.5 and Code of Civil Procedure § 1021.5 and all other applicable
22 statutes; and

23 14. For such other and further relief the Court may deem just and proper.

24 Dated: January 17, 2019

25 Respectfully submitted,
26 SANI LAW, APC

27 By:

28 
Sam Sani
Attorney for Plaintiff
EVELIA MONTANO

1
DEMAND FOR JURY TRIAL

2 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.
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4 Dated: January 17, 2019

5 Respectfully submitted,
6 SANI LAW, APC

7 By: 
8 Sam Sani
9 Attorney for Plaintiff
10 EVELIA MONTANO

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**CONSENT OF PLAINTIFF EVELIA MONTANO
RE CONSENT TO SUE**

I, Evelia Montano, declare:

1. I am the Plaintiff in the above-captioned action. The following is of my own personal knowledge and, if called as a witness, I could and would testify competently thereto.

2. I hereby consent to be joined in this suit against Defendants BYD COACH AND BUS LLC and DOES 1 through 10, under the Fair Labor Standards Act, 29 U.S.C. §§ 206 *et seq.*, for unpaid minimum wages and overtime wages and other relief available under the Act.

3. I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 11, 2019 in Little Rock, California.

— DocuSigned by:

Evelia Montano